UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,756	10/22/2003	Amit P. Acharya	RSW920030209US1	5366

45541   7590   03/27/2009
HOFFMAN WARNICK LLC
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EXAMINER
KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
2454	

MAIL DATE	DELIVERY MODE
03/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **ONE MONTH OR THIRTY (30) DAYS,** WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

This time period for reply is NOT extendable under 37 CFR 1.136(a). This communication constitutes notice under 37 CFR 1.136(a)(1)(i).

To avoid abandonment of the application, applicant must, within this time period for reply, file:

.(1) A letter requesting <u>not</u> to have a first-action interview, or

(2) A completed Applicant Initiated Interview Request Form (PTOL-413A) accompanied by a proposed amendment or arguments.

Inventor participation in the Pre-First Action Interview is encouraged if it would expedite resolution of the application.

Disposition of Claims

3)☒ Claim(s) *30-32* is/are pending in the application.

　　3a) Of the above claim(s) _____ is/are withdrawn from consideration.

4)☐ Claim(s) _____ is/are allowed.

5)☒ Claim(s) *30-32* is/are rejected.

6)☐ Claim(s) _____ is/are objected to.

7)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

8)☐ The specification is objected to by the Examiner.

9)☒ The drawing(s) filed on *22 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

10)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

11)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

Contact Information

　　Examiner's Telephone Number: (571)270-1591

　　Examiner's Typical Work Schedule: Monday through Friday 9am-5pm

　　Supervisor's Name: Nathan Flynn

　　Supervisor's Telephone Number: (571) 272-1915

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date *10/22/2003*.

4) ☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Notification of Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
1	31-32	n/a	101	Claim 31 is rejected as software per se. The rationale for this can be found in [0033] of Applicant's specification. Claim 32 is rejected as comprising a carrier wave, see [0022] of Applicant's specification.
2	30-32	U	112 2nd paragraph	Claims 30-32 are confusing because it is unclear how "deploying" and "installing" are different. One of ordinary skill in the art, even in light of Applicant's specification would not be able to determine what defines
3	30-32	N, A, B	103(a)	Regarding claims 30-32, N discloses creating and installing a program from a configuration containing a quantity of components. (See at least the abstract "a plurality of pre-defined templates for building

Expanded Discussion/Commentary

2		these terms. To illustrate this confusion, the Examiner cites a Java glossary (ref. U) which defines deployment as "The process of installing software into an operational environment." This leaves the Examiner with no choice but to draw the conclusion that the deployment and installation referred to in Applicant's claims are in fact the same step. Applicant should explicitly amend the claims with some definition of what differentiates "deployment" from "installation" to overcome this rejection.
3		corresponding programs upon the high-level objects", also page 5 lines 15-24, page 9 lines 17-30. N does not disclose creating a test program and running it against the main application as well as monitoring the performance of the server. The general concept of creating a test program and running it against a server and monitoring server performance is well known in the art as taught by A. (see at least Col. 11) It would have been obvious to
3		one of ordinary skill in the art at the time of the invention to combine N and A in order to facilitate remote testing of an application. N and A do not teach estimating performance of the application using a different number of objects or configurations. The general concept of estimating performance of applications from benchmarks is well known in the art as taught by B. (Col. 2, lines 57-64)
3		It would have been obvious to one of ordinary skill in the art at the time of the invention to modify N and A with the teaching of B in order to more accurately model the server.

DATE: 03/26/05

DUSTIN NGUYEN
PRIMARY EXAMINER